

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DRUNK DRIVING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 14-227a of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:

4 (a) No person shall operate a motor vehicle
5 while under the influence of intoxicating liquor
6 or any drug or both. A person commits the offense
7 of operating a motor vehicle while under the
8 influence of intoxicating liquor or any drug or
9 both if he operates a motor vehicle on a public
10 highway of this state or on any road of a district
11 organized under the provisions of chapter 105, a
12 purpose of which is the construction and
13 maintenance of roads and sidewalks, or on any
14 private road on which a speed limit has been
15 established in accordance with the provisions of
16 section 14-218a, or in any parking area for ten or
17 more cars or on any school property (1) while
18 under the influence of intoxicating liquor or any
19 drug or both or (2) while the ratio of alcohol in
20 the blood of such person is [ten-hundredths]
21 EIGHT-HUNDREDTHS of one per cent or more of
22 alcohol, by weight.

23 (b) No person shall operate a motor vehicle
24 on a public highway of this state or on any road
25 of a district organized under the provisions of
26 chapter 105, a purpose of which is the
27 construction and maintenance of roads and
28 sidewalks, or on any private road on which a speed
29 limit has been established in accordance with the
30 provisions of section 14-218a, or in any parking
31 area for ten or more cars or on any school
32 property while his ability to operate such motor
33 vehicle is impaired by the consumption of
34 intoxicating liquor. A person shall be deemed
35 impaired when at the time of the alleged offense
36 the ratio of alcohol in the blood of such person
37 was more than seven-hundredths of one per cent of
38 alcohol, by weight, but less than [ten-hundredths]
39 EIGHT-HUNDREDTHS of one per cent of alcohol, by
40 weight.

41 (c) Except as provided in subsection (d) of
42 this section, in any criminal prosecution for
43 violation of subsection (a) or (b) of this
44 section, evidence respecting the amount of alcohol
45 or drug in the defendant's blood or urine at the
46 time of the alleged offense, as shown by a
47 chemical analysis of the defendant's breath, blood
48 or urine shall be admissible and competent
49 provided: (1) The defendant was afforded a
50 reasonable opportunity to telephone an attorney
51 prior to the performance of the test and consented
52 to the taking of the test upon which such analysis
53 is made; (2) a true copy of the report of the test
54 result was mailed to or personally delivered to
55 the defendant within twenty-four hours or by the
56 end of the next regular business day, after such
57 result was known, whichever is later; (3) the test
58 was performed by or at the direction of a police
59 officer according to methods and with equipment
60 approved by the Department of Public Health and
61 was performed by a person certified or recertified
62 for such purpose by said department or recertified
63 by persons certified as instructors by the
64 Commissioner of Public Health. If a blood test is
65 taken, it shall be on a blood sample taken by a
66 person licensed to practice medicine and surgery
67 in this state, a phlebotomist, a qualified
68 laboratory technician, an emergency medical
69 technician II or a registered nurse; (4) the
70 device used for such test was checked for accuracy

71 immediately before and after such test was
72 performed by a person certified by the Department
73 of Public Health; (5) an additional chemical test
74 of the same type was performed at least thirty
75 minutes after the initial test was performed or,
76 if requested by the police officer for reasonable
77 cause, an additional chemical test of a different
78 type was performed to detect the presence of a
79 drug or drugs other than or in addition to
80 alcohol, provided the results of the initial test
81 shall not be inadmissible under this subsection if
82 reasonable efforts were made to have such
83 additional test performed in accordance with the
84 conditions set forth in this subsection and such
85 additional test was not performed or was not
86 performed within a reasonable time, or the results
87 of such additional test are not admissible for
88 failure to meet a condition set forth in this
89 subsection; and (6) evidence is presented that the
90 test was commenced within two hours of operation.
91 In any prosecution under this section it shall be
92 a rebuttable presumption that the results of such
93 chemical analysis establish the ratio of alcohol
94 in the blood of the defendant at the time of the
95 alleged offense, except that if the results of the
96 additional test indicate that the ratio of alcohol
97 in the blood of such defendant is
98 [twelve-hundredths] TEN-HUNDREDTHS of one per cent
99 or less of alcohol, by weight, and is higher than
100 the results of the first test, evidence shall be
101 presented that demonstrates that the test results
102 and the analysis thereof accurately indicate the
103 blood alcohol content at the time of the alleged
104 offense.

105 (d) In any prosecution for a violation of
106 subdivision (1) of subsection (a) of this section,
107 reliable evidence respecting the amount of alcohol
108 in the defendant's blood or urine at the time of
109 the alleged offense, as shown by a chemical
110 analysis of the defendant's blood, breath or
111 urine, otherwise admissible under subsection (c)
112 of this section, shall be admissible only at the
113 request of the defendant.

114 (e) The Commissioner of Public Health shall
115 ascertain the reliability of each method and type
116 of device offered for chemical testing purposes of
117 blood, of breath and of urine and certify those
118 methods and types which he finds suitable for use

119 in testing blood, in testing breath and in testing
120 urine in this state. He shall adopt regulations
121 governing the conduct of chemical tests, the
122 operation and use of chemical test devices and the
123 training, certification and annual recertification
124 of operators of such devices as he finds necessary
125 to protect the health and safety of persons who
126 submit to chemical tests and to insure reasonable
127 accuracy in testing results. Such regulations
128 shall not require recertification of a police
129 officer solely because such officer terminates his
130 employment with the law enforcement agency for
131 which certification was originally issued and
132 commences employment with another such agency.

133 (f) In any criminal prosecution for a
134 violation of subsection (a) or (b) of this
135 section, evidence that the defendant refused to
136 submit to a blood, breath or urine test requested
137 in accordance with section 14-227b, AS AMENDED BY
138 SECTION 2 OF THIS ACT, shall be admissible
139 provided the requirements of subsection (b) of
140 said section have been satisfied. If a case
141 involving a violation of subsection (a) of this
142 section is tried to a jury, the court shall
143 instruct the jury as to any inference that may or
144 may not be drawn from the defendant's refusal to
145 submit to a blood, breath or urine test.

146 (g) If a person is charged with a violation
147 of the provisions of subsection (a) of this
148 section, the charge may not be reduced, nolle or
149 dismissed unless the prosecuting authority states
150 in open court his reasons for the reduction, nolle
151 or dismissal.

152 (h) Any person who violates any provision of
153 subsection (a) of this section shall: (1) For
154 conviction of a first violation, (A) be fined not
155 less than five hundred dollars nor more than one
156 thousand dollars and (B) be (i) imprisoned not
157 more than six months, forty-eight consecutive
158 hours of which may not be suspended or reduced in
159 any manner or (ii) imprisoned not more than six
160 months, with the execution of such sentence of
161 imprisonment suspended entirely and a period of
162 probation imposed requiring as a condition of such
163 probation that such person perform one hundred
164 hours of community service, as defined in section
165 14-227e, and (C) have his motor vehicle operator's
166 license or nonresident operating privilege

167 suspended for one year; (2) for conviction of a
168 second violation within ten years after a prior
169 conviction for the same offense, be fined not less
170 than five hundred dollars nor more than two
171 thousand dollars and imprisoned not more than one
172 year, ten consecutive days of which may not be
173 suspended or reduced in any manner, and have his
174 motor vehicle operator's license or nonresident
175 operating privilege suspended for two years; (3)
176 for conviction of a third violation within ten
177 years after a prior conviction for the same
178 offense, be fined not less than one thousand
179 dollars nor more than four thousand dollars and
180 imprisoned not more than two years, one hundred
181 twenty consecutive days of which may not be
182 suspended or reduced in any manner, and have his
183 motor vehicle operator's license or nonresident
184 operating privilege suspended for three years; and
185 (4) for conviction of a fourth and subsequent
186 violation within ten years after a prior
187 conviction for the same offense, be fined not less
188 than two thousand dollars nor more than eight
189 thousand dollars and imprisoned not more than
190 three years, one year of which may not be
191 suspended or reduced in any manner, and have his
192 motor vehicle operator's license or nonresident
193 operating privilege permanently revoked upon such
194 fourth offense. For purposes of the imposition of
195 penalties for a second, third or fourth and
196 subsequent offense pursuant to this subsection, a
197 conviction under the provisions of subsection (a)
198 of section 14-227a in effect on October 1, 1981,
199 or as amended thereafter, a conviction under the
200 provisions of either subdivision (1) or (2) of
201 subsection (a) of this section or a conviction
202 under the provisions of section 53a-56b or 53a-60d
203 shall constitute a prior conviction for the same
204 offense.

205 (i) Any person who violates subsection (b) of
206 this section shall have committed an infraction.

207 (j) (1) The suspension of a motor vehicle
208 operator's license or nonresident operating
209 privilege imposed under subsection (h) of this
210 section shall take effect immediately upon the
211 expiration of any period in which an appeal of any
212 conviction under subsection (a) of this section
213 may be taken; provided if an appeal is taken, the
214 suspension shall be stayed during the pendency of

215 such appeal. If the suspension takes effect, the
216 defendant shall immediately send his motor vehicle
217 operator's license or nonresident operating
218 privilege to the Department of Motor Vehicles. (2)
219 The motor vehicle operator's license or
220 nonresident operating privilege of a person found
221 guilty under subsection (a) of this section who is
222 under eighteen years of age shall be suspended for
223 the period of time set forth in subsection (h) of
224 this section, or until such person attains the age
225 of eighteen years, whichever period is longer. (3)
226 The motor vehicle operator's license or
227 nonresident operating privilege of a person found
228 guilty under subsection (a) of this section who,
229 at the time of the offense, was operating a motor
230 vehicle in accordance with a special operator's
231 permit issued pursuant to section 14-37a shall be
232 suspended for twice the period of time set forth
233 in subsection (h) of this section.

234 (k) In addition to any fine or sentence
235 imposed pursuant to the provisions of subsection
236 (h) of this section, the court may order such
237 person to participate in an alcohol education and
238 treatment program.

239 (l) Notwithstanding the provisions of
240 subsection (c) of this section, evidence
241 respecting the amount of alcohol or drug in the
242 blood of an operator of a motor vehicle involved
243 in an accident who has suffered or allegedly
244 suffered physical injury in such accident, which
245 evidence is derived from a chemical analysis of a
246 blood sample taken from such person after such
247 accident at the scene of the accident, while en
248 route to a hospital or at a hospital, shall be
249 competent evidence to establish probable cause for
250 the arrest by warrant of such person for a
251 violation of subsection (a) of this section and
252 shall be admissible and competent in any
253 subsequent prosecution thereof if: (1) The blood
254 sample was taken for the diagnosis and treatment
255 of such injury; (2) the blood sample was taken by
256 a person licensed to practice medicine in this
257 state, a resident physician or intern in any
258 hospital in this state, a phlebotomist, a
259 qualified laboratory technician, an emergency
260 medical technician II or a registered nurse; (3) a
261 police officer has demonstrated to the
262 satisfaction of a judge of the Superior Court that

263 such officer has reason to believe that such
264 person was operating a motor vehicle while under
265 the influence of intoxicating liquor or drug or
266 both and that the chemical analysis of such blood
267 sample constitutes evidence of the commission of
268 the offense of operating a motor vehicle while
269 under the influence of intoxicating liquor or drug
270 or both in violation of subsection (a) of this
271 section; and (4) such judge has issued a search
272 warrant in accordance with section 54-33a
273 authorizing the seizure of the chemical analysis
274 of such blood sample.

275 (m) For the purpose of this section,
276 "phlebotomist" means a staff member of a hospital,
277 licensed under chapter 368v, who performs
278 venipunctures to obtain blood samples as ordered
279 by a licensed physician and is under the
280 jurisdiction of the chief of pathology.

281 Sec. 2. Section 14-227b of the general
282 statutes is repealed and the following is
283 substituted in lieu thereof:

284 (a) Any person who operates a motor vehicle
285 in this state shall be deemed to have given his
286 consent to a chemical analysis of his blood,
287 breath or urine and, if said person is a minor,
288 his parent or parents or guardian shall also be
289 deemed to have given his consent.

290 (b) If any such person, having been placed
291 under arrest for operating a motor vehicle while
292 under the influence of intoxicating liquor or any
293 drug or both or while his ability to operate such
294 motor vehicle is impaired by the consumption of
295 intoxicating liquor, and thereafter, after being
296 apprised of his constitutional rights, having been
297 requested to submit to a blood, breath or urine
298 test at the option of the police officer, having
299 been afforded a reasonable opportunity to
300 telephone an attorney prior to the performance of
301 such test and having been informed that his
302 license or nonresident operating privilege may be
303 suspended in accordance with the provisions of
304 this section if he refuses to submit to such test
305 or if he submits to such test and the results of
306 such test indicate that the ratio of alcohol in
307 his blood was [ten-hundredths] EIGHT-HUNDREDTHS of
308 one per cent or more of alcohol, by weight, and
309 that evidence of any such refusal shall be
310 admissible in accordance with subsection (f) of

311 section 14-227a, AS AMENDED BY SECTION 1 OF THIS
312 ACT, and may be used against him in any criminal
313 prosecution, refuses to submit to the designated
314 test, the test shall not be given; provided, if
315 the person refuses or is unable to submit to a
316 blood test, the police officer shall designate the
317 breath or urine test as the test to be taken. The
318 police officer shall make a notation upon the
319 records of the police department that he informed
320 the person that his license or nonresident
321 operating privilege may be suspended if he refused
322 to submit to such test or if he submitted to such
323 test and the results of such test indicated that
324 the ratio of alcohol in his blood was
325 [ten-hundredths] EIGHT-HUNDREDTHS of one per cent
326 or more of alcohol, by weight.

327 (c) If the person arrested refuses to submit
328 to such test or analysis or submits to such test
329 or analysis, commenced within two hours of the
330 time of operation, and the results of such test or
331 analysis indicate that the ratio of alcohol in the
332 blood of such person is [ten-hundredths]
333 EIGHT-HUNDREDTHS of one per cent or more of
334 alcohol, by weight, the police officer, acting on
335 behalf of the Commissioner of Motor Vehicles,
336 shall immediately revoke and take possession of
337 the motor vehicle operator's license or, if such
338 person is a nonresident, suspend the nonresident
339 operating privilege of such person, for a
340 twenty-four-hour period and shall issue a
341 temporary operator's license or nonresident
342 operating privilege to such person valid for the
343 period commencing twenty-four hours after issuance
344 and ending thirty days after the date such person
345 received notice of his arrest by the police
346 officer. The police officer shall prepare a
347 written report of the incident and shall mail the
348 report together with a copy of the completed
349 temporary license form, any operator's license
350 taken into possession and a copy of the results of
351 any chemical test or analysis to the Department of
352 Motor Vehicles within three business days. The
353 report shall be made on a form approved by the
354 Commissioner of Motor Vehicles and shall be
355 subscribed and sworn to under penalty of false
356 statement as provided in section 53a-157b by the
357 arresting officer. If the person arrested refused
358 to submit to such test or analysis, the report

359 shall be endorsed by a third person who witnessed
360 such refusal. The report shall set forth the
361 grounds for the officer's belief that there was
362 probable cause to arrest such person for operating
363 a motor vehicle while under the influence of
364 intoxicating liquor or any drug or both or while
365 his ability to operate such motor vehicle is
366 impaired by the consumption of intoxicating
367 liquor, and shall state that such person had
368 refused to submit to such test or analysis when
369 requested by such police officer to do so or that
370 such person submitted to such test or analysis,
371 commenced within two hours of the time of
372 operation, and the results of such test or
373 analysis indicated that the ratio of alcohol in
374 the blood of such person was [ten-hundredths]
375 EIGHT-HUNDREDTHS of one per cent or more of
376 alcohol, by weight.

377 (d) Upon receipt of such report, the
378 Commissioner of Motor Vehicles may suspend any
379 license or nonresident operating privilege of such
380 person effective as of a date certain, which date
381 shall be not later than thirty days after the date
382 such person received notice of his arrest by the
383 police officer. Any person whose license or
384 operating privilege has been suspended in
385 accordance with this subsection shall
386 automatically be entitled to a hearing before the
387 commissioner to be held prior to the effective
388 date of the suspension. The commissioner shall
389 send a suspension notice to such person informing
390 such person that his operator's license or
391 nonresident operating privilege is suspended as of
392 a date certain and that he is entitled to a
393 hearing prior to the effective date of the
394 suspension and may schedule such hearing by
395 contacting the Department of Motor Vehicles not
396 later than seven days after the date of mailing of
397 such suspension notice.

398 (e) If such person does not contact the
399 department to schedule a hearing, the commissioner
400 shall affirm the suspension contained in the
401 suspension notice for the appropriate period
402 specified in subsection (h) of this section.

403 (f) If such person contacts the department to
404 schedule a hearing, the department shall assign a
405 date, time and place for the hearing, which date
406 shall be prior to the effective date of the

407 suspension. At the request of such person or the
408 hearing officer and upon a showing of good cause,
409 the commissioner may grant one continuance for a
410 period not to exceed fifteen days. If a
411 continuance is granted, the commissioner shall
412 extend the validity of the temporary operator's
413 license or nonresident operating privilege issued
414 pursuant to subsection (c) of this section for a
415 period not to exceed the period of such
416 continuance. The hearing shall be limited to a
417 determination of the following issues: (1) Did the
418 police officer have probable cause to arrest the
419 person for operating a motor vehicle while under
420 the influence of intoxicating liquor or drug or
421 both or while his ability to operate such motor
422 vehicle was impaired by the consumption of
423 intoxicating liquor; (2) was such person placed
424 under arrest; (3) did such person refuse to submit
425 to such test or analysis or did such person submit
426 to such test or analysis, commenced within two
427 hours of the time of operation, and the results of
428 such test or analysis indicated that the ratio of
429 alcohol in the blood of such person was
430 [ten-hundredths] EIGHT-HUNDREDTHS of one per cent
431 or more of alcohol, by weight; and (4) was such
432 person operating the motor vehicle. In the
433 hearing, the results of the test or analysis shall
434 be sufficient to indicate the ratio of alcohol in
435 the blood of such person at the time of operation,
436 except that if the results of the additional test
437 indicate that the ratio of alcohol in the blood of
438 such person is [twelve-hundredths] TEN-HUNDREDTHS
439 of one per cent or less of alcohol, by weight, and
440 is higher than the results of the first test,
441 evidence shall be presented that demonstrates that
442 the test results and analysis thereof accurately
443 indicate the blood alcohol content at the time of
444 operation. The fees of any witness summoned to
445 appear at the hearing shall be the same as
446 provided by the general statutes for witnesses in
447 criminal cases.

448 (g) If, after such hearing, the commissioner
449 finds on any one of the said issues in the
450 negative, the commissioner shall reinstate such
451 license or operating privilege. If, after such
452 hearing, the commissioner does not find on any one
453 of the said issues in the negative or if such
454 person fails to appear at such hearing, the

455 commissioner shall affirm the suspension contained
456 in the suspension notice for the appropriate
457 period specified in subsection (h) of this
458 section. The commissioner shall render a decision
459 at the conclusion of such hearing or send a notice
460 of his decision by bulk certified mail to such
461 person not later than thirty days or, if a
462 continuance is granted, not later than forty-five
463 days from the date such person received notice of
464 his arrest by the police officer. The notice of
465 such decision sent by certified mail to the
466 address of such person as shown by the records of
467 the commissioner shall be sufficient notice to
468 such person that his operator's license or
469 nonresident operating privilege is reinstated or
470 suspended, as the case may be. Unless a
471 continuance of the hearing is granted pursuant to
472 subsection (f) of this section, if the
473 commissioner fails to render a decision within
474 thirty days from the date such person received
475 notice of his arrest by the police officer, the
476 commissioner shall reinstate such person's
477 operator's license or nonresident operating
478 privilege, provided notwithstanding such
479 reinstatement the commissioner may render a
480 decision not later than two days thereafter
481 suspending such operator's license or nonresident
482 operating privilege.

483 (h) The commissioner shall suspend the
484 operator's license or nonresident operating
485 privilege, and revoke the temporary operator's
486 license or nonresident operating privilege issued
487 pursuant to subsection (c) of this section, of a
488 person who did not contact the department to
489 schedule a hearing, who failed to appear at a
490 hearing or against whom, after a hearing, the
491 commissioner held pursuant to subsection (g) of
492 this section, as of the effective date contained
493 in the suspension notice or the date the
494 commissioner renders his decision, whichever is
495 later, for a period of: (1) (A) Ninety days, if
496 such person submitted to a test or analysis and
497 the results of such test or analysis indicated
498 that the ratio of alcohol in the blood of such
499 person was [ten-hundredths] EIGHT-HUNDREDTHS of
500 one per cent or more of alcohol, by weight, or (B)
501 six months if such person refused to submit to
502 such test or analysis, (2) one year if such person

503 has previously had his operator's license or
504 nonresident operating privilege suspended under
505 this section, and (3) two years if such person has
506 two or more times previously had his operator's
507 license or nonresident operating privilege
508 suspended under this section.

509 (i) The provisions of this section shall
510 apply with the same effect to the refusal by any
511 person to submit to an additional chemical test as
512 provided in subdivision (5) of subsection (c) of
513 section 14-227a, AS AMENDED BY SECTION 1 OF THIS
514 ACT.

515 (j) The provisions of this section shall not
516 apply to any person whose physical condition is
517 such that, according to competent medical advice,
518 such test would be inadvisable.

519 (k) The state shall pay the reasonable
520 charges of any physician who, at the request of a
521 municipal police department, takes a blood sample
522 for purposes of a test under the provisions of
523 this section.

524 (l) The Commissioner of Motor Vehicles shall
525 adopt regulations in accordance with chapter 54 to
526 implement the provisions of this section.

527 TRA COMMITTEE VOTE: YEA 19 NAY 4 JF C/R JUD

528 JUD COMMITTEE VOTE: YEA 32 NAY 3 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5515

STATE IMPACT	Revenue Gain, Potential Cost, Workload Increase (Transportation Fund), see explanation below
MUNICIPAL IMPACT	Minimal Cost, Can Be Absorbed, see explanation below
STATE AGENCY(S)	Department of Motor Vehicles, Criminal Justice Agencies, Department of Mental Health and Addiction Services

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: Lowering the blood alcohol level from 0.10 to 0.08 would result in additional administrative per se hearings for the Department of Motor Vehicles (DMV). In addition, more motor vehicle operator's licenses would be suspended not only resulting from court convictions but from administrative per se hearings as well. It is anticipated that the DMV could handle the additional workload within available resources. A minimal revenue gain to the Transportation Fund is expected from the \$100 license restoration fee.

The bill would result in minimal, absorbable costs for state and local police departments associated with additional processing time of defendants. It would also result in additional pressures on the criminal justice system by removing a number of cases that are currently infractions and subjecting them to increased penalties and prison time. It is anticipated that these changes can be absorbed within the budgetary resources of the criminal justice system. Over the long term, these

along with other changes would lead to a need for increased criminal justice resources, especially for incarceration and community supervision. There are currently about 160 individuals incarcerated for driving under the influence.

The bill would also result in a revenue gain from increased fines. According to Judicial Department reports, the state collected \$1,583,141 in revenue from fines for driving under the influence (DUI) and \$106,669 for driving while impaired (DWI) in 1997. In addition, the bill would result in an increase in the number of those who would participate in the Pretrial Alcohol Education Program which requires the payment of an application fee (\$50) and a program fee (\$350 prior to 7/1/97, \$425 afterward). The state collected about \$2.5 million from these fees in 1997.

The bill would also result in increased costs to the Department of Mental Health and Addiction Services. This cost is related to the increase in anticipated enrollment in the Pretrial Alcohol Education Program due to the changes included in this bill. The extent of this cost cannot be determined at this time.

* * * * *

OLR BILL ANALYSIS

SHB 5515

AN ACT CONCERNING DRUNK DRIVING

SUMMARY: This bill lowers the blood alcohol level under the criminal driving under the influence law and the administrative license suspension law from 0.10% to 0.08% blood-alcohol content (BAC). It also makes a related change to a requirement on second BAC test results.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Criminal Offense

By law, it is a criminal offense to operate a motor vehicle while under the influence of alcohol. This

offense may be prosecuted with or without any direct evidence of a person's BAC. The determinative issue is whether a person's ability to drive has been affected to an appreciable degree.

It is also a criminal offense under the same law to operate a motor vehicle with a BAC of 0.10% or above. The existence of a BAC of 0.10% or above is sufficient to establish the offense. The bill lowers this level to 0.08%.

BAC Reduction

Currently, if a person submits to a chemical test of his BAC following an arrest for drunk or impaired driving and the results indicate a BAC of 0.10% or above, he is subject to an immediate administrative ("per se") license suspension and a subsequent criminal prosecution, which can, among other things, result in an additional license suspension following conviction (see BACKGROUND). A BAC result of more than 0.07%, but less than 0.10% is considered driving while impaired and is an infraction.

Under the bill, the BAC establishing the criminal offense and the administrative per se violation drops from 0.10% to 0.08% and impairment becomes a BAC of over 0.07% to 0.079%.

Second Test Results

Current law requires administration of a second chemical test within a certain time of the initial test. When this second test results in a BAC of 0.12% or more and is higher than the initial test result, evidence must be presented at a criminal prosecution or per se suspension hearing that the test results and analysis indicate the BAC at the time of the alleged offense. The bill drops this second test threshold from 0.12% to 0.10%, reflecting the reduction in the drunk driving BAC level.

BACKGROUND

Criminal Penalties for Driving Under the Influence or Driving with a BAC of 0.10% or Above

People convicted of either driving under the influence

of alcohol or driving with a BAC of 0.10% or more are subject to the following criminal penalties:

<u>Conviction</u>	<u>Jail Sentence</u>	<u>Fine</u>	<u>License Suspension</u>
First	(a) Up to six months with mandatory minimum of two days or (b) 100 hours of community service	\$500- \$1,000	One year
Second	Up to one year, with mandatory minimum of 10 consecutive days	\$500- \$2,000	Two years
Third	Up to two years, with mandatory minimum of 120 consecutive days	\$1,000- \$4,000	Three years
Fourth	Up to three years, with mandatory minimum of one year	\$2,000- \$8,000	Life

Pretrial Alcohol Education Program

Those arrested for driving under the influence or driving with a 0.10% BAC or more for the first time may apply to court for the pretrial alcohol education program. If the court allows the person to take this program, the criminal prosecution is suspended. If the person satisfactorily completes the program, the criminal charge is dropped.

Administrative Per Se License Suspension

The administrative per se license suspension law is separate from and additional to the criminal penalties imposed for driving under the influence or driving with a BAC of 0.10% or more. The administrative per se license suspension penalties are a 90-day suspension for a first offense, a one-year suspension for a second offense, and a two-year suspension for a third or subsequent offense.

A separate administrative per se license suspension law applies to drivers under age 21. It requires a license suspension for BAC levels between 0.02% and 0.10% for these drivers.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Change of Reference
Yea 19 Nay 4

Judiciary Committee

Joint Favorable Substitute
Yea 32 Nay 3